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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,095	01/07/2004	Bill E. Cham	P07389US01/BAS	2329
881 7590 02/12/2008 STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			EXAMINER PESELEV, ELLI	
			ART UNIT 1623	PAPER NUMBER
			MAIL DATE 02/12/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/752,095	CHAM, BILL E.	
	Examiner	Art Unit	
	Elli Peselev	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-32, 43-53 and 64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-32, 43-53 and 64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1623

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-32, 43-53 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cham et al (Cancer Letters, 55 (1990) 221-225).

Cham et al disclose a composition comprising glycoalkaloids (BEC) useful for treating cancer (page 221). Cham et al further disclose that rhamnose inhibits the efficacy of BEC and that the aglycone solasodine is not effective against murine S180 (page 221). Thus, a person having ordinary skill in the art at the time of the present invention would have been motivated to remove rhamnose and aglycones from the BEC composition in order to improve efficacy of BEC.

Claims 30, 31, 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cham et al (Cancer Letters, 55 (1990) 221-225) in view of Daniels et al (U.S. Patent No. 4,053,591).

Cham et al disclose that aglycone solasodine is not effective against murine S189. Thus a person having ordinary skill in the art at the time the claimed invention was made would have been motivated to remove aglycones from the composition disclosed by Cham et al using conventional chloroform purification process disclosed by Daniels et al (column 14, lines 50-52).

Applicant's arguments filed December 3, 2007 have been fully considered but they are not persuasive.

Applicant contends that the rhamnose discussed in the Cham et al paper is not a degradation product of BEC in the composition being used but is in fact added to the BEC composition. Applicant further contends that Cham et al teach that the BEC composition without the addition of rhamnose is effective at ensuring survival of all the tested animals. Thus there is no motivation to further purify BEC. These arguments have not been found persuasive. At the time the claimed invention was made rhamnose was known to effect the efficacy of BEC. The degradation of BEC, which results in free rhamnose, occurs over time. Thus, it is not clear how much, if any rhamnose was present in the composition tested by Cham et al. Further, since Cham et al disclose that rhamnose affects efficacy of BEC, a person having ordinary skill in the art at the time the claimed invention was made would have been motivated to remove rhamnose, whether the rhamnose resulted from addition, degradation or any other source. Also, Cham et al discloses that solasodine is no effective against murine S189. Thus, a person having ordinary skill in the art at the time the claimed invention was made would have been motivated to remove solasodine, which was known to have no efficacy. It is generally acknowledged that it is desirable for the active component in the pharmaceutical composition to be as pure as possible. Thus, the removal of degradation product in a pharmaceutical composition, in order to further purify a pharmaceutical composition, would have been prima facie obvious to a person having ordinary skill in the art at the time the claimed invention was made.

Art Unit: 1623

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

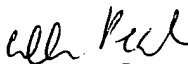
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (571) 272-0659. The examiner can normally be reached on 8.00-4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Jiang can be reached on (571) 272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Elli Peselev


ELLI PESELEV
PRIMARY EXAMINER
GROUP 1200